

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FILED/ACCEPTED

MAY 18 2007

Federal Communications Commission
Office of the Secretary

In the Matter of

)

CITY OF BOSTON

PS Docket No. 07-69

)

and

)

)

SPRINT NEXTEL CORPORATION

Mediation No. TAM- 1155

)

)

Relating to Rebanding Issues in the
800 MHz Band

)

To: Office of the Secretary
Attention: Chief Administrative Law Judge

**OPPOSITION OF NEXTEL COMMUNICATIONS, INC.
TO MOTION TO DELETE/COMBINE ISSUES**

Nextel Communications, Inc. ("Nextel"), a wholly owned subsidiary of Sprint Nextel Corporation, by its attorneys, hereby files its Opposition to the Motion to Delete/Combine Issues (the "Motion") submitted by the City of Boston ("Boston") on May 5, 2007, in the above-captioned proceeding. Boston sought two changes to the Commission Order designating issues for hearing before the Administrative Law Judge ("ALJ"), one to eliminate an order that has been resolved and the other to combine the two separate remaining matters.¹ While Nextel agrees that one disputed issue is resolved, Nextel opposes the combination of the two remaining issues for the reasons discussed herein.

No. of Copies rec'd 0 + 6
List ABCDE

¹ See *City of Boston and Sprint Nextel Corporation*, Hearing Designation Order, PS Docket No. 07-69, DA 07-1631 (PSHSB April 5, 2007) ("*Hcnring Designation Order*"); *City of Boston, Massachusetts and Sprint Nextel*, Memorandum Opinion and Order, 21 FCC Rcd 14661, (PSHSB Dec. 20, 2006) ("*Boston MO&O*").

I. NEXTEL AGREES THAT ISSUE 8(C) IS RESOLVED.

Nextel agrees with Boston that the parties, since the time the Bureau's Order was released, have fully resolved Designated Issue 8(c). This issue concerned the appropriate contract language in the contract between Nextel and the appropriate Boston incumbent licensee, the Frequency Reconfiguration Agreement ("FRA") to govern the processing of notifications of changes. Nextel therefore agrees Boston that there is no need for this issue to be prosecuted before the **ALJ**. The issue should be deleted from consideration in the proceeding.

II. IT WOULD BE INAPPROPRIATE TO COMBINE ISSUES 8(A) AND 8(B).

Boston's Motion also **seeks** to combine consideration of the Bureau's determination of the operational need for the purchase of MCM software to support the reconfiguration of Boston's two separate radio systems slated to be reconfigured as part of Wave 1, Phase 1 of the Commission-approved Regional Priorization Plan. The Motion would effectively treat two separate Boston systems as a single system and is a transparent effort to enhance Boston's chances of meeting its burden of proof.

One possible consideration the Chief Administrative Law Judge may take into account in evaluating whether Nextel is required as a matter of operational necessity to reimburse Boston for the purchase of MCM software is the relative complexity of the radio system for which the software is requested. By combining the two distinct systems into one, Boston is attempting artificially to increase the apparent complexity of the system at issue, evidently in the hope that treating the two radio systems and licensees as one will somehow justify the additional costs associated with the purchase of MCM software.

The threshold problem with Boston's argument is that the two systems are, in fact, distinct. The Boston Police Data ("BPD") system is a data-only system with no interoperability

requirements and only 419 mobile units that will be retuned.' The Boston Trunking and Transportation ("BTT") system is a voice system comprised of two separate subsystems with 2,203 mobile and portable units that will need to be retuned. The systems are entirely distinct, with separate licenses.⁴ As such, reconfiguration of each system will be governed by a separate FRA. Indeed, Motorola, Boston's vendor for the actual physical reconfiguration of the two systems, prepared a separate quote and a separate statement of work for each system. Second, the actual physical reconfiguration of the two systems will proceed on different timetables, with no apparent plan to coordinate the two projects.⁵ Simply put, while both systems must be reconfigured along with other Wave 1, Stage 1 systems, the two reconfigurations are distinct.

Moreover, from a procedural standpoint, throughout the entire mediation process, the two systems at issue have been treated as separate and distinct projects. Given the distinct nature of the two systems, they were treated separately in the underlying mediation, with separate records, and separate Recommended Resolutions issued during the mediation process from which the instant proceeding arose. The Public Safety and Homeland Security Bureau chose to address the two mediations in a single, consolidated order, but neither that consolidation nor the Bureau's decision that MCM software was not a reimbursable expense for either system reflect the conflation of the two distinct systems into one.⁶ Rather, the Bureau's order in this matter makes

² *Boston MO&O* at ¶ 5.

³ *Id.*

⁴ The BPD system is licensed under call signs WQBA899, WQBB424, WNGY708, WPFF631, WPFF645 and WPHY940. *Id.* The BTT system is licensed under call signs KNJA520, KKR520, WPYH902 and WQDU213. *Id.*

⁵ *Id.*

⁶ *Id.* at ¶ 2

plain that the Bureau considered the operational need for MCM software to support the reconfiguration of the two systems separately.⁷

Notwithstanding Boston's claim that "[i]f this issue [sic] is not combined, it could inadvertently lead to confusion and redundancy in the presentation of evidence at the hearing," the truth of the matter is that there are, in fact, two separate sets of issues with two separate mediation records.⁸ The disputed issue of MCM software was separately briefed for each of the two systems individually. In fact, given that there are two distinct records in this matter, the combination of these two issues is more likely to lead to confusion in the presentation of evidence at the hearing. In the event there are arguments or evidence common to the two separate issues, Boston can easily incorporate them by reference. There is no reason to combine the two issues, each separately designated for hearing by the Bureau, into a single issue.'

Furthermore, Boston's characterization of the quotes it presented for MCM software does not appear entirely consonant with the records of the two mediations. Boston's Motion claims that "the total cost ~~of~~ the MCM Technology software was again quoted without reference to any anticipated shared use of the software among affected City departments." As the Bureau's Order makes plain, the vendor's quote for MCM software and related training for the two systems reflected a price reduction of \$23,750 which Boston presented as an "inter-agency discount.'" It cannot be true that "the total cost of the subject MCM Technology software, without reference to

⁷ *Id.* ("Based on our de novo review of the mediation records, we find that in both the BPD and BTT system cases, Boston has not demonstrated that the amount of funding it seeks for the purchase of the MCM software and associated installation and training is reasonable, prudent, and the 'minimum necessary to provide facilities comparable to those presently in use.'")

⁸ City of Boston, Motion to Delete/Combine Issues, PS Docket No. 07-69 (May 5, 2007) ("*Motion*").

⁹ *See Hearing Designation Order.*

¹⁰ *Boston MO&O*, ¶ 24

its use by other City departments, was included in the estimates provided in the record related to the negotiation of this FRA,” where those estimates reflected a discount precisely due to “use by other City departments.”.

Finally, Nextel believes that one purpose of the ALJ’s instruction that the parties “meet to agree on cooperative methods for discovery” in this case was to afford the parties the opportunity to discuss matters such as those raised in Boston’s Motion.¹² Rather than wait to meet with Nextel, or even seeking Nextel’s opinion as to the validity of combining the issues in question, Boston simply filed its Motion. Nextel thus does not believe the Motion to be consistent with the spirit of the ALJ’s instructions in this case.

¹¹ *Motion* at 2.

¹² *City of Boston and Sprint Nextel Corporation*, Prehearing Conference Order, PS Docket No. 07-69, 1 (**April 26, 2007**).

111. CONCLUSION

For the foregoing reasons, Nextel respectfully requests that Boston's Motion to combine issues 8(a) and 8(b) be denied. Nextel further requests that Boston's Motion to delete issue 8(c) from this hearing proceeding be granted, and this issue removed from further consideration.

Respectfully Submitted,

NEXTEL COMMUNICATIONS, INC.

A handwritten signature in black ink, reading "Laura Phillips", written over a horizontal line.

Laura H. Phillips
Howard M. Liberman
Patrick R. McFadden
Drinker Biddle & Reath LLP
1500 K Street, N.W., Suite 1100
Washington, DC 20005-1209
Laura.Phillips@dbr.com
Howard.Liberman@dbr.com
Patrick.McFadden@dbr.com
202-842-8800
202-842-8465/66 (fax)

Its Attorneys

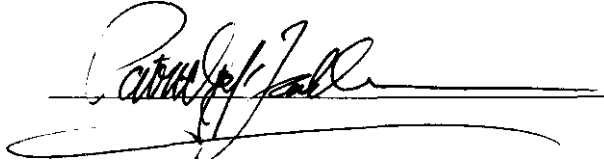
May 18, 2007

CERTIFICATE OF SERVICE

I, Patrick R. McFadden, herby certify that on this 18th day of May, 2007, a true copy of this Notice of Appearance was served via first class. postage paid United States Mail upon the following:

City of Boston
c/o Robert H. Schwaninger, Jr.
Schwaninger & Associates, P.C.
1331 H Street, N.W., Suite 500
Washington, DC 20001

Gary Schonman, Special Counsel
Enforcement Bureau, I&H Division
Federal Communications Commission
445 12th St., SW., Room 4C237
Washington, D.C. 20554

A handwritten signature in black ink, appearing to read "Patrick R. McFadden", is written over a horizontal line. The signature is stylized and cursive.